

Kaczmarek, Chris

From: Kaczmarek, Chris
Sent: Wednesday, December 03, 2014 5:22 PM
To: Taub, Cynthia
Cc: Talbert, Stephanie (ENRD); Ross, Philip; McLain, Jennifer; Allison_Starmann@americanchemistry.com; Goldberg, Seth
Subject: Confidential Settlement Communication re Draft Settlement Agreement

Dear Cynthia,

We have reviewed your November 3, 2014 email and the markup of the draft Settlement Agreement that we previously provided to you by email on October 3, 2014. The purpose of this email is to respond to the few issues you raise that seem to remain open in connection with our efforts to settle the underlying litigation.

First, in your markup of the draft settlement agreement we provided by email on October 3, 2014, you have asked some questions about and suggested an edit to the provision setting forth some of the planned content for the Antimicrobial Pesticide Use Site Index ("USI"). Additionally, you have requested that the Agency drop two sentences in paragraph 14 of the draft settlement agreement, the intent of which is to account for the side discussions ACC seeks with EPA on issues ACC maintains are at play in the underlying litigation, with said discussions to occur before ACC is required under the terms of the settlement agreement to actually dismiss the case.

Notwithstanding our continuing concerns over the prospect of EPA engaging in conversations with ACC on topics and issues that ACC believes are at issue in the underlying litigation well before ACC is required under the settlement agreement to dismiss the case, the Agency is willing, in the interest of concluding our negotiations and reaching settlement in this matter, to drop its insistence on the waiver requested in my October 10, 2014 email and the corresponding language in paragraph 14 that you have asked be deleted. In exchange, however, ACC will need to drop its questions on and suggested edits to that provision of the settlement agreement setting forth some of the planned content for the USI. As you know, the draft settlement agreement we are negotiating includes provisions that, should they become part of a final settlement agreement, provide you with ample opportunity to comment on the USI once it is put out for public comment by the Agency.

Second, your email also asks about the "expected timing and content of the letter regarding EPA's commitment to provide a comment period for future substantive changes to the USI." As you may recall, that issue was addressed in Stephanie Talbert's August 1, 2014 letter to you. In that letter, she stated the following: "With respect to future substantive changes to the USI, EPA will agree to announce such proposed changes via 'OPP Updates' and also intends to announce such proposed changes on the EPA website. EPA will also agree to take comment on such proposed changes for 30 days and consider any comments submitted before making any substantive changes to the USI. Because this is an ongoing commitment for an indefinite period of time that goes beyond the time in which a stipulated dismissal would occur, EPA proposes to make this particular commitment via a letter from EPA counsel so as not to complicate or unnecessarily lengthen the amount of time that the litigation remains pending." EPA can confirm that it continues to stand by this commitment with respect to future substantive changes to the USI.

I trust this satisfactorily addresses the few outstanding issues that you identified in your email and the markup of the draft settlement agreement included with your email. We look forward to a rapid conclusion of our negotiations so that we can pursue formal approval of entry of a settlement in this case.

Sincerely, Chris.

Chris E. Kaczmarek
Assistant General Counsel
Pesticide and Toxic Substance Law Office
Office of General Counsel
U.S. EPA
Tel (202) 564-3909